

INTER GOVERNMENTAL AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF FLAGSTAFF

RED GAP RANCH
LONGITUDINAL WATERLINE ALONG AN ACCESS CONTROLLED INTERSTATE FACILITY

This Intergovernmental Agreement (“Agreement”) is entered into this ____ day of _____, 2016, by and between the Arizona Department of Transportation (“ADOT”) and the City of Flagstaff (“Flagstaff”) (collectively the “Parties”), in order to establish a process whereby the City of Flagstaff can obtain an ADOT issued encroachment permit or series of permits (the “Permit”) for the installation, construction, operation and maintenance a 30-inch water line, with a maximum design pressure of 300 psi, to run partially along and within the existing ADOT controlled access right-of-way of I-40 from Mile Post 217 to Mile Post 238 (the “Project”) as more particularly described below.

Recitals:

1. WHEREAS, ADOT is empowered by Arizona Revised Statutes, Section 11-952 and Section 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of ADOT; and
2. WHEREAS, Flagstaff is authorized by Arizona Revised Statutes, Section 11-952 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of Flagstaff; and
3. WHEREAS the ADOT Director has determined that, pursuant to Arizona Administrative Code, R17-3-502, the Project is an encroachment qualified for an ADOT encroachment permit, provided Flagstaff meets all relevant requirements for such a permit; and
4. WHEREAS, the Parties will in good faith use their best efforts to complete all of the terms and conditions of this Agreement.

Agreement:

Now therefore, the Parties agree:

1. Flagstaff must design, construct, operate and maintain the Project with primary consideration given to the safety of highway users and the integrity of the highway.
2. The Project may not adversely affect the safety, design, construction, operation, maintenance or stability of the highway.
3. The Project may not interfere with or impair the future expansion or improvement of the highway.
4. Neither the State, nor any of its departments, officers, agents or employees will be liable for any claims, demands, costs or expenses, including attorney's fees and costs, for any loss, claim, damages, or injury

to any person or entity, or to property, including third parties' persons or property, arising out of or related to Flagstaff's use of the right-of-way, unless caused by the willful, reckless or negligent act of the State, its departments, officers, agents or employees. As a condition of the Permit Flagstaff will be required to agree to indemnify ADOT for any such losses, unless caused by the willful, reckless or negligent act of the State, its departments, officers, agents or employees.

5. ADOT will not incur any costs for the project, whether those costs are foreseen or unforeseen. The project will be fully funded by Flagstaff, which will reimburse ADOT for any expenses or costs associated with the project.
6. The Project has no prior right to be within the right-of-way. Any realignment of the water line, for whatever reason, will be at Flagstaff's sole and exclusive cost and risk.
7. ADOT may, at any time in the sole discretion of the Director, require Flagstaff to realign portions of the water line if the Director determines that a relocation of the Project is necessary for a transportation purpose.
8. Nothing in this IGA may limit the Director's jurisdiction or control over the highway.
9. Flagstaff will be responsible for providing adequate insurance or other assurances as reasonably determined by ADOT in its sole discretion.
10. Prior to submitting an application for the ADOT encroachment permit, Flagstaff will prepare and submit to ADOT the following for ADOT's approval in its reasonable discretion.
 - a. a draft catastrophic feasibility study to ADOT for review and approval.
 - b. a draft maintenance plan to ADOT for review and approval.
 - c. a draft emergency response plan to ADOT for review and approval.
 - d. a draft NEPA document to be submitted by ADOT to FHWA. The NEPA document will address the full Project including but not limited to a change of access control limits and construction of a new access control fence to ADOT specifications.
 - e. draft construction plans (meaning 30%, 60% and 95% plans) to ADOT for review and approval, which plans will include designed mitigation measures satisfactory to ADOT.
 - f. such other plans, reports or other submittals as may be required by ADOT.
 - g. ADOT applications for encroachment permits to perform pre-construction activities such as design, surveys, testing, and other preconstruction activities. Either Flagstaff or its consultants will submit said applications to ADOT, and ADOT will issue the permits provided Flagstaff complies with all relevant ADOT requirements for such permits.
11. After ADOT reviews the submittal required by paragraph 10 and has determined the final technical requirements:
 - a. Flagstaff will submit final versions of the submittals required by paragraph 10 with its application for an ADOT encroachment permit.

- b. Flagstaff (and to the extent necessary its consultants and contractors) will submit to ADOT an application for a permit to construct, operate and maintain the Project, and ADOT will issue the permits provided Flagstaff complies with all relevant ADOT requirements for such permits.
 - c. The location of the Project (including the water line and associated improvements) within the right-of-way will be determined by the Parties during the design process. ADOT retains sole discretion over the location of the Project within the right-of-way.
12. Flagstaff will prepare a schedule for all activities to be undertaken pursuant to this Agreement for ADOT's approval in its reasonable discretion. The parties expect that the schedule for various activities contemplated expressly or implicitly by this Agreement will be determined and adjusted from time to time as the process of design, surveys, testing other preconstruction activities, construction, operation and maintenance evolves.
13. ADOT will:
- a. Coordinate with Flagstaff to attend comment review meeting with Flagstaff when the submittals are at the 30%, 60%, 90%, 100% design stages.
 - b. Represent 30% but not more than 40% of the selection committee for a Construction Manager at Risk (CMAR) contactor if ADOT chooses to participate in the committee.
 - c. Pursuant to the State's procurement standards, hire a consulting engineering company which specializes in waterline and pump station design to review and comment on documentation, and participate in any review meetings, submitted through this Agreement at Flagstaff's cost, and allow Flagstaff to review the consulting engineering company's proposed scope and fee and the reasonable discretion to provide input on and/or reject the same if in Flagstaff's determination such scope and fee are excessive. If Flagstaff rejects the consulting engineering company's proposed scope of work and fee, the agreement shall terminate. Any payment obligation incurred prior to such termination shall survive said termination.
 - d. Pursuant to the State's procurement standards hire a consulting engineering company which specializes in waterline and pump station design to monitor construction that takes place in ADOT's right-of-way at Flagstaff's cost, and allow Flagstaff to review the consulting engineering company's proposed scope and fee and the reasonable discretion to provide input on and/or reject the same if in Flagstaff's determination such scope and fee are excessive. If Flagstaff rejects the consulting engineering company's proposed scope of work and fee, the agreement shall terminate. Any payment obligation incurred prior to such termination shall survive said termination.
 - e. Submit invoices for the consultants listed above to Flagstaff for payment.
 - f. Submit to Flagstaff staff time invoices for all time spent by ADOT staff on in-house design review and coordination as set forth above.
14. Flagstaff shall pay all invoices from ADOT as set forth above no later than thirty (30) days after delivery of said invoice to Flagstaff. In the event that Flagstaff fails to pay said invoice within thirty (30) days after delivery, ADOT may give written notice of non-payment via certified mail (with the U.S. Postal Service at 211 W. Aspen, Flagstaff, Arizona 86001) AND via email to the Flagstaff Utilities

Director. Flagstaff shall have fifteen (15) days from the Flagstaff Utilities Director's receipt of written notice of non-payment from ADOT to cure said non-payment.

15. If Flagstaff ceases operation or maintenance of the Project within the right-of-way for a period of two years, ADOT will cancel the encroachment agreement(s) for the Project. Flagstaff will be required to remove all structures and facilities related to the Project within ADOT's right of way, including the waterline and restore the ADOT right-of-way to its condition prior to construction of the Project.
16. The Project may remain within ADOT right of way so long as Flagstaff complies with all permit requirements as determined by ADOT, provided ADOT does not need the City to relocate the Project, either within or outside of the ADOT right of way, for a transportation purpose, in which case ADOT can revoke the permit. The decision whether to revoke a permit is in the sole discretion of ADOT. ADOT will make reasonable efforts to allow the City to relocate the Project, in whole or in part, within the existing right of way or any new right of way acquired by ADOT for the transportation project. It is understood that ADOT must have a transportation purpose to acquire new right of way resulting in relocation of the Project.
17. This Agreement shall remain in full force and effect 10 years from the effective date or completion of the project, whichever occurs first. The parties may extend this agreement for an additional 5 years by mutual agreement.
18. This Agreement may be amended upon mutual written consent of both Parties.

CITY OF FLAGSTAFF, an Arizona
municipal corporation

STATE OF ARIZONA
Department of Transportation

By: _____
JOSH COPLEY, City Manager

By: _____
DALLAS HAMMIT, P.E.
State Engineer

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney